

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.24510 OF 2005

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ORAL ORDER:

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Petitioners claim to be the residents of Talla Singaram village, Nuthankal Mandal, Nalgonda District. It is stated that they made an application to the respondent-authorities seeking permission to organize a new Fishermen Co-operative Society in Talla Singaram village in the year 2003. In pursuance thereof, the 3rd respondent-Assistant Director of Fisheries, issued notice to all the applicants and conducted skill test. The petitioners herein attended the skill test and they were qualified. Subsequently, the 3rd respondent vide proceedings dated 19.09.2005 registered a Fishermen Co-operative Society at Talla Singaram village, which was preceded by the permission accorded by the 1st respondent-Commissioner of fisheries dated 5.09.2005. However, the petitioners though eligible, were not included as members of the said society on the ground that they are members of Rajaka Sangham. It is stated that as a matter of fact, the petitioners were already removed from the primary membership of the Rajaka Sangham, and therefore, they made a representation to the 1st respondent-Commissioner of Fisheries, complaining about their non-inclusion as members of the Fishermen Co-operative Society. In pursuance thereof, the 1st respondent vide memo dated 22.09.2005 directed the 2nd respondent to examine the matter with reference to availability of water spread area and take necessary action under the provisions of the A.P. Co-operative Societies Act, 1964. Pursuant thereto, the 2nd respondent vide memo dated 15.10.2005 directed the 3rd respondent to consider the request of the petitioners. Accordingly, the 3rd respondent, vide letter dated 18.10.2005 admitted the petitioners herein as members of the society. However, in spite of the said orders, the 4th respondent did not allot membership to the petitioners. Hence, this writ petition seeking a declaration that the action of the 4th respondent-Fishermen Co-operative Society in not implementing the order of the 3rd respondent dated 18.10.2005 as arbitrary and illegal and contrary to the provisions of the A.P. Co-operative Societies Act, 1964.

On behalf of the 4th respondent-society a counter-affidavit has been filed stating that the directions issued by the 3rd respondent, vide letter dated 18.10.2005, are not in accordance with the provisions of law, and that respondents 1 to 3 have not conducted any enquiry before deciding to admit the petitioners as members of the 4th respondent-society. That apart, the society was not issued any notice and there was no prior intimation about the alleged enquiry. It is further stated that the 4th respondent-society convened a meeting on 24.10.2005 and it was unanimously resolved that the petitioners shall not be included in the 4th respondent-society. It is also stated that fishing activities of the members of the 4th respondent-society are confined to two lakes i.e., Ramasamudram lake with a water spread area of 24 hectares and Ravulakunta Cheruvu with a water spread area of 23 hectares, but there is no sufficient water in these two lakes, and therefore, it is not viable to include any new members. It is stated that there are 16 members in the 4th respondent-society, and therefore, it is not viable to include new members. The respondent-authorities without considering the issue with regard to viability, mechanically passed orders directing inclusion of the petitioners as members of the 4th respondent-society. Such procedure adopted by respondents 1 to 3 is contrary to Section 19 of the A.P. Co-operative Societies Act, 1964, and therefore, the proceedings dated 18.10.2005 are vitiated and are *non est* under law.

On behalf of respondents 1 to 3, the Assistant Director of Fisheries filed a counter-affidavit stating that two applications dated 13.10.2003 and 31.10.2003 were received from two groups of people of Talla Singaram village for formation of a Fishermen Co-operative Society. After considering the applications, skill test was conducted on 10.03.2005 in which 24 members belonging to both the groups, including the petitioners were selected. Though the petitioners were qualified, they were not included as members of the Society on the ground that they are continuing as members of the Saraswathi Rajaka Sahakara Sangham. Accordingly, the Commissioner of Fisheries accorded permission for formation of a Fishermen Co-operative Society and the same was registered by the 3rd respondent, vide proceedings dated 19.09.2005. However, subsequently, the petitioners having resigned from Saraswathi Rajaka Sahakara Sangham, made a request to include them as members in the Fishermen Co-operative Society, Talla Singaram. Accordingly, vide letter dated 18.10.2005 the 3rd respondent directed the 4th

respondent-society to admit them as members of the society since there is sufficient water spread area. In spite of the same, the 4th respondent-society refused to take them as members. It is also pointed out that as per the bye-laws of the society, there is a provision to enroll anybody as members, provided that they are skilled in fishing profession. Since the Fisheries Development Officer, Suryapet having conducted skill test selected the seven petitioners herein, they are eligible to be included as members of the 4th respondents-society.

I have heard the learned counsel for both the parties and perused the material on record.

Section 19 of the A.P. Co-operative Societies Act, 1964 (for short “the Act”) provides for “eligibility for membership” of the society. Sub-section (2-A) thereof states that any person duly qualified for admission as a member under the provisions of the Act, the rules and the bye-laws, may apply through the Registrar for membership of such Societies and in such forms as may be prescribed and such person shall be deemed to have been admitted as a member of the society from the date of receipt of the application in the office of the society. Thus, it is clear that the application for membership shall be made to the society itself, ofcourse through the Registrar. Once such an application is received, the person shall be deemed to have been admitted as a member from the date of receipt of such an application in the office of the society. Sub-section (3) of Section 19 of the Act, however, empowers the General Body of the society to refuse admission to membership to any person duly qualified, but such a refusal shall not be without sufficient cause and where admission is so refused, the decision, with reasons therefor, shall be communicated by registered post to such person within 15 days of the date of decision, or within sixty days from the date of his application for membership, whichever is earlier. Rule 12-A of the A.P. Co-operative Societies Rules, read with Form-J, appended to the Rules, makes it clear that such application for membership of a Co-operative Society shall be addressed to the society through the Registrar.

Having examined the scope of sub-section (2-A) of Section 19 of the Act, this Court in **Sri Venklateswara Inland Fisheries Co-Operative Society v. Assistant Director of Fisheries** held thus:

Under Section 19(2-A) of the A.P. Co-operative Societies Act, the Registrar can receive applications for membership and these applications can be forward to the Society. From bare perusal of Section 19(2-A) (2-B)

and (3) of the Act, it is clear that the Registrar does not have the absolute power of admitting any member to the Society, but if an application is forwarded by him to the Society, on receipt of such application by the Office of the Society, the person is deemed to be a member. But still a member cannot be enrolled if the Society does not want to, which is laid down by sub-section (3) of Section 19 of the Act – ‘admissions can be refused by giving reasons’.

In the light of the above, it is clear that the society has discretion to refuse membership to any person, however, the same shall be for sufficient cause and reasons and it shall be communicated to the person concerned.

In the case on hand, admittedly, the said procedure has not been followed since no such application is sent to the 4th respondent-society. It is clear from the material on record that the petitioners herein have made application only to respondents 1 to 3, and the 3rd respondent as per the instructions of respondents 1 and 2, passed an order granting membership to the petitioners. The only plea of the petitioners as well as the 3rd respondent in their respective affidavits is that the petitioners were already declared as eligible having been succeeded in the skill test, and as a matter of fact they made an application to permit them to form a Society.

It is true that while according permission to form 4th respondent-society, the petitioners were not included as members only on the ground that they were members of another society viz. Saraswathi Rajaka Sahakara Sangam. Subsequently, having found that they were not continuing as members of the said Sangam, the impugned order has been passed by the 3rd respondent. However, once the society is formed, new members can be admitted only in accordance with the procedure prescribed under sub-section (2-A) Section 19 of the Act, in which event, the 4th respondent-society will have an opportunity to admit or refuse new membership by passing a resolution of the General Body. Since admittedly, in the case on hand, the application was not sent to the 4th respondent-society, there was no opportunity to the 4th respondent-society. Such a procedure is not permissible under the provisions of the Act. The mere fact that the petitioners were found to be eligible in the skill test does not confer any right on the petitioners and the respondents 1 to 3 cannot take a unilateral decision without following the procedure prescribed under Section 19 (2-A) of the Act.

In the circumstances, no Mandamus can be issued to the 4th respondent to implement the order of the 3rd respondent dated 18.10.2005. Instead, I deem it appropriate to dispose of the writ petition with a direction to the 3rd respondent who is the functional Registrar to forward the application of the petitioners to the 4th respondent-society following the procedure prescribed under sub-section (2-A) of Section 19 of the Act, in which event, the 4th respondent-society shall consider the same in accordance with law.

The writ petition is accordingly disposed of. No costs.

(G. ROHINI, J.)

23rd February, 2006.

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THE HON'BLE Ms. JUSTICE G. ROHINI
WRIT PETITION No.24510 OF 2005

23rd February, 2006.

Between:

Nellutla Chennaiah and six others. .. Petitioners.

And

The Commissioner of Fisheries,

Department of Fisheries,

Matshya Bhavan, Shanthinagar,

Vijayanagar Colony, Hyderabad and
three others. .. Respondents.